

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal Action No. 19-CR-00156 (MAD)

v.

(Hon. Mae A. D'Agostino)

XIAOQING ZHENG

STIPULATION AND ORDER
FOR ENLARGEMENT OF TIME

Defendant.

STIPULATION

Kevin Luibrand, the attorney for defendant Xiaoqing Zheng in the above-captioned action, having moved for a continuance of an additional one hundred eighty (180) days within which the defense may prepare for trial, and Antoinette T. Bacon, Acting United States Attorney for the Northern District of New York, and Richard Belliss, Assistant United States Attorney, Northern District of New York, appearing, having consented to the continuance and the proposed exclusion of a one hundred eighty (180) day period under the Speedy Trial Act, pursuant to Title 18, United States Code, Section 3161(h)(7)(A), the parties hereby stipulate and agree as follows:

1. The prior proceedings in this case occurred as follows:
 - a. Date of federal arrest: August 1, 2018
 - b. Date of superseding indictment: August 10, 2021
 - c. Date of arraignment (waiver): August 12, 2021
 - d. Defendant custody status: Defendant is released on conditions
 - i. Date United States moved for detention: N/A
 - ii. Date of detention hearing: N/A
 - iii. Date detention decision issued: N/A

- d. Prior enlargements of time and exclusions under the Speedy Trial Act: multiple pre-indictment enlargements of time; eleven post-indictment enlargements of time excluding the time running from May 31, 2019 through July 28, 2019; from August 9, 2019 through October 6, 2019; from October 7, 2019 through January 3, 2020; from December 6, 2019 through March 3, 2020; from February 13, 2020 through May 11, 2020; from May 5, 2020 through September 2, 2020; from August 3, 2020 through October 31, 2020; from September 23, 2020 through December 20, 2020; from December 2, 2020 through April 20, 2021; from March 31, 2021 through May 28, 2021; and from July 6, 2021 through September 17, 2021.

2. The defendant has requested the continuance based on the following facts and circumstances:

- a. On August 10, 2021, a federal grand jury in the Northern District of New York returned a multiple count superseding indictment alleging that the defendant conspired to commit economic espionage, conspired to commit theft of trade secrets, committed economic espionage, committed theft of trade secrets, and made false statements, all in violation of Title 18, United States Code, Sections 1831, 1832, and 1001. The defendant has been arraigned and is currently released on conditions pending trial.

- b. On September 1, 2021 the parties held a conference call with the Court wherein the Court ordered that due to COVID-19 safety concerns for a multi-week trial, the trial start date of this case would be moved from September 7, 2021, to March 3, 2022. The parties will use the additional time to prepare for trial.

3. The parties stipulate and agree that the ends of justice served by granting this

continuance outweigh the best interests of the public and the defendant in a speedy trial. The nature of the investigation, the current COVID-19 climate and risks to the safety of the trial participants, and the parties desire for additional time to prepare for trial make it unreasonable to expect the defense to be prepared to defend the case at trial on September 7, 2021 (the presently scheduled trial date), taking into account the exercise of due diligence.

4. The parties stipulate and agree that the time period running one hundred eighty (180) days from the date of the Court's order shall be excludable under the Speedy Trial Act pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv).

The undersigned attorneys affirm under penalty of perjury the accuracy of the facts set forth above and apply for and consent to the proposed order set forth below.

Dated: September 7, 2021

ANTOINETTE T. BACON
Acting United States Attorney

By: Richard Belliss
Richard Belliss
Assistant U.S. Attorney
Bar Roll No. 515295

September 7, 2021

Kevin Luibrand
Kevin Luibrand, Esq.
Attorney for Xiaoqing Zheng
Bar Roll No. 103089

ORDER

A. The Court incorporates into this Order the stipulated facts set forth above and hereby adopts them as findings.

B. The Court has considered its obligation under 18 U.S.C. § 3161(h)(7)(A) to determine whether a continuance serves the ends of justice in a manner that outweighs both the public interest and the defendant's rights. The Court finds that pursuant to 18 U.S.C. § 3161(h)(7)(A), the ends of justice served by granting the requested continuance outweigh the best interests of the public and the defendant in a speedy trial because the nature of the investigation, the current COVID-19 climate and risk to trial participants for a multi-week trial, and the parties desire for additional time to prepare for trial, make the requested delay necessary, taking into account the exercise of due diligence.

BASED ON THE STIPULATED FACTS AND THE COURT'S RELATED FINDINGS
IT IS HEREBY ORDERED

A. That the one hundred eighty (180) day period running from the date of this Order, up to and including _____, 2022 shall be excludable in computing time under the Speedy Trial Act pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv) in order to give the defense reasonable time necessary for effective preparation.

B. The deadline for the completion of reciprocal discovery by the defendant (otherwise due within 21 days of arraignment pursuant to the terms of the Local Rules of Criminal Procedure and the Criminal Pretrial Order) will be extended by ____ days to _____ 2021.

C. The trial in this matter shall begin on March 3, 2022 before United States District Judge Mae A. D'Agostino, in Albany, New York or, in the alternative, a change of plea shall be entered on or before _____, 2022.

Dated: _____, 2021

Hon. Mae A. D'Agostino
United States District Court Judge
Northern District of New York